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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA  
4

5 MARCUS RONALD SWALLOW,  
6 Plaintiff,  
7 v.  
8 MIGUEL PANTELAKIS, *et al.*,  
9 Defendants.

Case No. 3:23-cv-00227-ART-CLB

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
(ECF NO. 57)**

10 Plaintiff Marcus Ronald Swallow brings this action under 42 U.S.C. § 1983  
11 against Defendants Miguel Pantelakis, Matthew Ulm, and Luis Perez alleging  
12 that Defendants used excessive force against him. Before the Court is Plaintiff's  
13 Motion for Appointment of Counsel (ECF No. 57). The Court denies that motion,  
14 but grants Plaintiff additional time to respond to Defendants' pending Motion for  
15 Summary Judgment (ECF No. 54).

16 **I. BACKGROUND**

17 In September 2024, Defendants moved for summary judgment based on  
18 statute of limitations, no constitutional violation, and qualified immunity. (ECF  
19 No. 54.) Plaintiff has not opposed that motion. Instead, Plaintiff filed a request  
20 for extension of time, stating that he has had issues accessing mail, and filed  
21 this motion for appointment of counsel.

22 **II. DISCUSSION**

23 Generally, a person has no right to counsel in civil actions. *Palmer v.*  
24 *Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (citing *Storseth v. Spellman*, 654 F.2d  
25 1349, 1353 (9th Cir. 1981)). The Court may only appoint counsel for a party  
26 proceeding *in forma pauperis* in exceptional circumstances. 28 U.S.C. §  
27 1915(e)(1). *Tilei v. California Department of Corrections and Rehabilitation*, 644  
28 Fed.Appx. 758, 759 (9th Cir. 2016) (citing *Terrell v. Brewer*, 935 F.2d 1015, 1017

1 (9th Cir. 1991)). In order to determine whether exceptional circumstances exist,  
2 the Court must consider “the likelihood of success on the merits as well as the  
3 ability of the petitioner to articulate his arguments *pro se* in light of the  
4 complexity of the legal issues involved.” *Palmer*, 560 F.3d at 970 (citation  
5 omitted). Neither of these considerations is dispositive and the Court must  
6 examine them together. *Id.* (citing *Wilborn v. Escalderon*, 789 F.2d 1328, 1331  
7 (9th Cir. 1986)).

8 The Court cannot conclude on this record that exceptional circumstances  
9 warranting the appointment of counsel exist. Swallow argues that this case has  
10 become too complex to handle without a lawyer. (ECF No. 57 at 1.) He points to  
11 his education and learning disability, difficulties accessing documents, and the  
12 fact that Defendants are officers outside the prison. (*Id.* at 2.) Swallow argues  
13 that a trial would be too complex for him to litigate without an attorney. (*Id.*) The  
14 Court is sympathetic to these issues but finds that Swallow has been able to  
15 articulate his arguments well in prior briefing at the motion to dismiss stage,  
16 including by filing a motion to apply equitable tolling. (See ECF Nos. 25, 26.) This  
17 case will only proceed to trial if Swallow is successful in defeating Defendants’  
18 motion for summary judgment, which he has not yet replied to. Defendants  
19 argue that Swallow’s claims are barred by the statute of limitations, that their  
20 use of force was reasonable in the circumstances, and that they are entitled to  
21 qualified immunity. (ECF No. 54.) Despite his challenges, the Court finds  
22 Swallow is sufficiently able to advocate for himself at this stage of the proceedings  
23 and denies his motion for appointment of counsel.

24 However, due to Swallow’s issues accessing mail, the Court gives Swallow  
25 an additional 14 days to respond to Defendants’ motion for summary judgment.  
26 The Court reminds Swallow that Defendants’ motion for summary judgment  
27 could end this case.

